REMARKS

Applicants have studied the Office Action dated December 23, 2004 and have made amendments to the claims. It is submitted that the application, as amended, is in condition for allowance. By virtue of this amendment, claims 1-22 are pending. Claims 1, 3, 6-8, and 14 have been amended, and new claims 19-22 have been added. Reconsideration and allowance of the pending claims in view of the above amendments and the following remarks are respectfully requested.

Claims 1-4, 7, 9-11, and 13 were rejected under 35 U.S.C. § 102(b) as being anticipated by Yamate (U.S. Patent No. 3,423,773). Claims 1-6, 9-11, and 13 were rejected under 35 U.S.C. § 102(b) as being anticipated by Tyndall (U.S. Patent No. 3,431,020). Claims 1-4, 9-11, and 13-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over England (U.S. Patent No. 3,997,926) in view of Yamate. Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over England in view of Yamate and Keane (U.S. Patent No. 3,434,165). These rejections are respectfully traversed.

The present invention is directed to gurneys that enable a patient in a spica cast with a bar to be comfortably held in an elevated position so as to allow the patient to experience a more comfortable existence. One preferred embodiment provides a gurney for a patient wearing a spica cast with a bar. The bar is fixedly attached to the spica cast so as to extend between the patient's legs in order to maintain the patient's legs in a fixed spread apart position. The gurney includes a base structure and a platform for holding the patient. The platform is coupled to the base structure and is capable of being in at least one elevated position.

The gurney also includes a bar support structure for supporting the bar that is fixedly attached to the spica cast so as to extend between the patient's legs when the platform is in the elevated position so as to support the patient wearing the spica cast with the bar when the platform is in the elevated position. The bar support structure is coupled to the platform. Because the gurney includes the bar support structure for supporting the bar (which is fixedly

attached to the spica cast so as to extend between the patient's legs) when the platform is in the elevated position, the patient's weight is supported by pressure on the bar when the platform is in the elevated position. Thus, the patient does not experience pressure or discomfort when in the elevated position.

The Yamate and Tyndall references are also directed to devices for supporting a patient wearing a spica cast. The England reference is directed to beds having a tiltable occupant support platform. However, none of Yamate, Tyndall, and England discloses a gurney for a patient wearing a spica cast with a bar that includes a bar support structure for supporting the bar, which is fixedly attached to the spica cast so as to extend between the patient's legs, when the platform is in the elevated position so as to support the patient when the platform is in the elevated position, as is recited in amended claim 1. Amended claim 14 contains similar recitations.

Yamate discloses devices for supporting a patient wearing a spica cast using one or more posts that support the bifurcation area of the spica cast. More specifically, in a first embodiment shown in Figures 1-3, the device includes an inclined platform 20 that is supported by frames 25 and 27. A metal pipe or post 21 projects perpendicularly from the platform 20, and is covered by a pad 23. A patient 11 wearing a spica cast 12 with a bar fixed between the legs "is placed on the platform so that the cast 12 actually hangs on the padded pipe or post 21", so that the post 21 "supports the patient 11 at the bifurcation or crotch of the cast 12." See Yamate at 2:68-3:2.

In a second embodiment shown in Figures 4 and 5, the platform 20 has a slot 71 that receives a pair of posts 72a and 72b that project perpendicularly from the platform 20. A patient 11 wearing a different type of spica cast 70 that does not have a bar fixed between the legs is placed on the platform "so that the cast 70 hangs on the posts 72a and 72b", so that the posts "support the patient at the knee bend positions of the cast 70." See Yamate at 3:38-41. Thus, Yamate discloses devices in which the bifurcation area of the spica cast hangs on one or more posts, so supporting the patient's weight exerts pressure on one or more points in the vicinity of the patient's crotch area when the platform is in an elevated position.

Tyndall discloses devices for supporting a patient wearing the type of spica cast that does not have a bar fixed between the legs using a seat that supports the bifurcation area of the spica cast. More specifically, the device includes a backpiece 2 that is supported by a framework 9 and 16, as shown in Figures 1 and 2. A seat or crotch block 4 extends perpendicularly from the backpiece 2, and is covered by padding 5. A patient 7 wearing the type of spica cast 6 that does not have a bar fixed between the legs is "seated on the seat 4 with the cast 6 extending on opposite sides of the seat." See Tyndall at 2:65-67. The seat 4 is "of the correct width to fit snugly within the concave crotch portion [of] the cast 6." See Tyndall at 2:43-56. Thus, Tyndall discloses devices in which the bifurcation area of the spica cast rests on a seat, so supporting the patient's weight exerts pressure in the vicinity of the patient's crotch area when the backpiece is in an elevated position.

In contrast, in preferred embodiments of the present invention, the gurney includes a bar support structure for supporting the bar that is fixedly attached to the spica cast so as to extend between the patient's legs when the platform is in the elevated position. In particular, the gurney supports a patient wearing a spica cast with a bar that is fixedly attached to the spica cast so as to extend between the patient's legs in order to maintain the patient's legs in a fixed spread apart position. The gurney includes a bar support structure for supporting the bar (which is fixedly attached to the spica cast) when the platform is in the elevated position so as to support the patient when the platform is in the elevated position. Thus, the bar (which is fixedly attached to the spica cast so as to extend between the patient's legs) rests on the bar support structure when the platform is in the elevated position, so the patient's weight is supported by pressure on the bar when the platform is in the elevated position. Thus, the patient does not experience pressure or discomfort when in the elevated position.

Further, Applicants submit that the recited limitation of "supporting the bar that is fixedly attached to the spica cast so as to extend between the patient's legs when the platform is in the elevated position so as to support the patient wearing the spica cast with the bar when the platform is in the elevated position" is not merely language of intended use. While the structure

of some physical elements can be defined by a simple element name, other physical elements may not have such a convenient name and must be defined in a different manner. For example, a "table" by definition has a flat surface and a number of legs that hold the top surface at some height above the ground. On the other hand, many generically named (or defined) physical elements such as an "attachment member" do not define a set structure and must be more specifically described in order to define a specific structure.

In the present case, the recited element is "a bar support structure for supporting the bar that is fixedly attached to the spica cast so as to extend between the patient's legs when the platform is in the elevated position so as to support the patient wearing the spica cast with the bar when the platform is in the elevated position." This specific language is meant to define the structure of the bar support structure, not to recite an intended use of the claimed gurney. In other words, this entire claim limitation is the name (or definition) of the element that is necessary to convey its structure.

Applicants' invention does not reside in what basic element or elements are used to form the recited "bar support structure"; it can be formed by any basic element or combination of basic elements that allow it to support the bar that is fixedly attached to the spica cast so as to extend between the patient's legs when the platform is in the elevated position so as to support the patient wearing the spica cast with the bar when the platform is in the elevated position. Thus, Applicants submit that the recited "bar support structure" element must be considered as a structural limitation, and that the Examiner cannot disregard part of the definition of the bar support structure as being merely functional language or an intended use.

Neither Yamate nor Tyndall teaches or suggests a gurney for a patient wearing a spica cast with a bar that is fixedly attached to the spica cast so as to extend between the patient's legs that includes a bar support structure for supporting the bar that is fixedly attached to the spica cast when the platform is in the elevated position so as to support the patient wearing the spica cast when the platform is in the elevated position. In the devices disclosed in Yamate and Tyndall, the patient wearing the spica cast sits on a peg or a block that is positioned at or in the vicinity of the crotch area. This causes all of the patient's weight to be borne at or in the vicinity

of the patient's crotch area. Thus, within a short time the patient will experience a great deal of discomfort and will have to be lowered back to the horizontal position or taken off the device. In contrast, the gurney of embodiments of the present invention has the bar support structure for supporting the bar that is fixedly attached to the spica cast when the platform is in the elevated position. Thus, the patient's weight is supported by the bar, so the patient does not experience pressure or discomfort and can remain in the elevated position for a long time.

Furthermore, the claimed features of the present invention are not realized even if the teachings of the England reference are incorporated into Yamate. England does not teach or suggest the claimed features of the present invention that are absent from Yamate.

Additionally, Applicant respectfully submits that one of ordinary skill in the art would not have had any motivation for modifying the devices for supporting a patient wearing a spica cast disclosed in Yamate with the beds disclosed in England so as to produce the gurneys recited in independent claims 1 and 14. It is well-settled that a reference must provide some motivation or reason for one of ordinary skill in the art (working without the benefit of hindsight reconstruction using the applicant's specification) to make the necessary changes in the disclosed method. The mere fact that a reference may be modified in the direction of the claimed invention does not make the modification obvious unless the reference expressly or impliedly teaches or suggests the desirability of the modification. In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984); Ex parte Clapp, 227 USPQ 972, 973 (Bd. App. 1985); Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (Bd. App. 1984).

Some motivation for combining the different features of the Yamate and England references in a specific manner must be shown in order to sustain a finding of obviousness. The Examiner's after-the-fact opinion that some features of one reference "would be a useful addition" to the device of another reference is not sufficient to make out a prima facie case of obviousness. To make a proper rejection under 35 U.S.C. § 103(a), the Examiner must establish a prima facie case using the appropriate legal standard for "obviousness". See MPEP § 2142-2143. There is simply no suggestion in Yamate or England of combining selected features of one reference with the device of the other references in order to produce the claimed

gurneys, nor is there any suggestion of the desirability of such a combination. It is respectfully submitted that the Examiner is engaging in hindsight reconstruction of the claimed invention.

Applicants believe that the differences between Yamate, Tyndall, England, and the present invention are clear in amended claims 1 and 14, which set forth gurneys according to embodiments of the present invention. Therefore, claims 1 and 14 distinguish over the Yamate, Tyndall, and England references, and the rejections of these claims under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) should be withdrawn.

As discussed above, amended claims 1 and 14 distinguish over the Yamate, Tyndall, and England references. Furthermore, the claimed features of the present invention are not realized even if the teachings of the Keane reference are incorporated into Yamate and England. Keane does not teach or suggest the claimed features of the present invention that are absent from Yamate and England.

Additionally, Applicant respectfully submits that one of ordinary skill in the art would not have had any motivation for modifying the devices for supporting a patient wearing a spica cast disclosed in Yamate with the beds disclosed in England and Keane so as to produce the gurney recited in dependent claim 8. It is well-settled that a reference must provide some motivation or reason for one of ordinary skill in the art (working without the benefit of hindsight reconstruction using the applicant's specification) to make the necessary changes in the disclosed method. The mere fact that a reference may be modified in the direction of the claimed invention does not make the modification obvious unless the reference expressly or impliedly teaches or suggests the desirability of the modification. In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984); Ex parte Clapp, 227 USPQ 972, 973 (Bd. App. 1985); Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (Bd. App. 1984).

Some motivation for combining the different features of the Yamate, England, and Keane references in a specific manner must be shown in order to sustain a finding of obviousness. The Examiner's after-the-fact opinion that a feature of one reference "would be of importance to a user" of the device of another reference is not sufficient to make out a prima facie case of

obviousness. To make a proper rejection under 35 U.S.C. § 103(a), the Examiner must establish a prima facie case using the appropriate legal standard for "obviousness". See MPEP § 2142-2143. There is simply no suggestion in Yamate, England, or Keane of combining selected features of one reference with the device of the other references in order to produce the claimed gurneys, nor is there any suggestion of the desirability of such a combination. It is respectfully submitted that the Examiner is engaging in hindsight reconstruction of the claimed invention.

Thus, amended claims 1 and 14 distinguish over the Yamate, Tyndall, England, and Keane references, and thus, claims 2-11 and 13, and claims 15-18 (which depend from claims 1 and 14, respectively) also distinguish over the Yamate, Tyndall, England, and Keane references.

Furthermore, Applicants submit that limitations in the dependent claims are absent from the Yamate, Tyndall, England, and Keane references. For example, dependent claim 5 recites that "the bar support structure comprises a box structure." Tyndall does not teach or suggest a box structure for supporting the patient. Tyndall only discloses a seat in the form of a flat planar structure. Likewise, dependent claim 6 recites that the bar support structure comprises "a protruding portion forming an overhang that restrains the bar so as to prevent the bar from moving off of the bar support structure when the platform is in the elevated position." Tyndall does not teach or suggest that the structure supporting the patient has any overhang that restrains the bar. Tyndall only discloses a seat in the form of a flat planar structure. Additionally, dependent claim 8 recites that the gurney includes "a toilet removably mounted underneath the trapdoor opening; and a toilet support member for supporting the toilet underneath the trapdoor opening and facilitating removable mounting of the toilet underneath the trapdoor opening." None of Yamate, England, and Keane teaches or suggests that the device includes such a toilet support member and a removable toilet that is accessed through a trapdoor opening. Keane only discloses a trapdoor opening in the device.

Therefore, it is respectfully submitted that the rejections of claims 1-11 and 13-18 under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) should be withdrawn.

Applicants thank the Examiner for indicating that claim 12 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims. Claim 12 depends from amended claim 1, which Applicants respectfully submit is allowable over the art of record. Accordingly, it is respectfully submitted that claim 12 is in condition for allowance.

Claims 19-22 have been added by this amendment, and are provided to further define the invention disclosed in the specification. Claims 19-22 are allowable for at least the reasons set forth above with respect to claims 1-18.

Applicants have examined the references cited by the Examiner as pertinent but not relied upon. It is believed that these references neither disclose nor make obvious the invention recited in the present claims. In view of the foregoing, it is respectfully submitted that the application and the claims are in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to call the undersigned attorney at (561) 989-9811 should the Examiner believe a telephone interview would advance the prosecution of the application.

Respectfully submitted,

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